



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8280460

Date: MAY 27, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a performing artist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which require documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). We dismissed the Petitioner's subsequent appeal, finding that the Petitioner met only one of the ten initial evidentiary criteria.¹ We rejected the Petitioner's second appeal as improperly filed and dismissed her three subsequent motions to reopen.²

The matter is now before us again on a fourth motion to reopen. The Petitioner submits additional evidence and asserts that it establishes that she meets two additional evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen.

I. LAW

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition.

¹ The record reflects that the Petitioner provided evidence that she has displayed her work at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii).

² Our most recent decision in this matter is *Matter of A-B-*, ID# 3845653 (AAO Aug. 29, 2019).

II. ANALYSIS

A. Prior Decision

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. Here, the subject of the prior decision was our dismissal of the Petitioner's third motion to reopen. As such, the purpose of this decision is to examine any new facts and supporting evidence that pertain to the dismissal of that motion.

With respect to our August 29, 2019 decision, we acknowledged that the Petitioner submitted new evidence related to her involvement as an actress in [] a short film released in 2016. This evidence was intended to demonstrate that the Petitioner met the evidentiary criteria relating to a leading or critical role, high salary or other significantly high remuneration, and commercial success in the performing arts. *See* 8 C.F.R. § 204.5(h)(3)(viii), (ix) and (x). She did not address or contest issues we raised in any of our prior decisions.

We determined that, because the Petitioner filed her petition in October 2015, she cannot rely on her involvement in the 2016 film [] to demonstrate her eligibility for this classification. Rather, a petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Nevertheless, we noted that the submitted evidence did not establish that the Petitioner performed in a leading or critical role in [], or that the film qualifies as an organization or establishment that has a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). We further noted that she did not submit evidence of her earnings in support of her claim that she commanded a high salary or other significant high remuneration for services in relation to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(ix). Finally, while the Petitioner provided evidence that [] was available on the Amazon Prime Video streaming service, she did not offer evidence that satisfied the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x), which requires evidence of "commercial successes [of her work] . . . as shown by box office receipts or record, cassette, compact disk, or video sales."

Therefore, we determined that the evidence submitted in support of the Petitioner's third motion to reopen did not constitute "new facts," did not overcome concerns we had raised in our previous decision, and did not establish her eligibility for the extraordinary ability classification.

B. Motion to Reopen

With the instant motion, the Petitioner submits additional evidence in support of her claim that she meets both the leading or critical role criterion and the criterion relating to commercial success in the performing arts based on her role in []. However, she does not acknowledge our determination that she cannot rely on her involvement in a film released in 2016 to establish her eligibility at the time of filing this petition in October 2015. Again, we emphasize that a petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

In support of the leading or critical role criterion, the Petitioner refers to the submitted plot summary for [REDACTED] noting that “the entire plot revolves around the lead character bringing my character [REDACTED].” However, she does not address our finding that she did not provide evidence demonstrating that this film is an organization or establishment with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). Even if we could consider evidence that post-dates the filing of the petition and determined that the Petitioner held a critical role in the film, the documentation submitted would not satisfy all elements of this criterion.

With respect to the commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x), the Petitioner submits evidence in support of her claim that Amazon streaming services are available worldwide to “billions of people,” that the Amazon Prime Video app is one of the most downloaded iPad apps, and that Amazon is recognized as one of the top brands in the world. She states that “Amazon does not release streaming rates for films” and therefore she cannot provide any figures for [REDACTED]. She emphasizes that “the fact that it is available in practically every country of the world is quite a significant achievement on its own and should not be taken lightly.” The Petitioner’s claim that the mere availability of a film or video on Amazon’s streaming service should be sufficient to meet the commercial success criterion, which requires evidence of box office receipts or video sales relative to others, is not persuasive.

Therefore, while the evidence submitted on motion is new, it does not overcome our previous determination that evidence that post-dates the filing of the petition cannot be relied on to establish the Petitioner’s eligibility for this classification. Further, the evidence submitted with this motion does not overcome our previous conclusion that the Petitioner’s involvement with the film [REDACTED] did not otherwise meet the leading or critical role or commercial success criteria at 8 C.F.R. 204.5(h)(3)(viii) and (x), either viewed alone or in the context of the evidence previously submitted to satisfy these criteria.

III. CONCLUSION

The motion to reopen will be dismissed because the Petitioner has not submitted new facts demonstrating that she meets the initial evidentiary requirements for the classification sought.

ORDER: The motion to reopen is dismissed.